MAHIADDIN MD YASIN v. PP

COURT OF APPEAL, PUTRAJAYA
AZIZAH NAWAWI JCA
CHE MOHD RUZIMA GHAZALI JCA
AHMAD ZAIDI IBRAHIM JCA
AZMAN ABDULLAH JCA
AZHAHARI KAMAL RAMLI JCA
[CRIMINAL APPEAL NO: W-06-1-03-2024]
11 SEPTEMBER 2024

Abstract – *In interpreting statutes, the interpretation must not go against the intention of Parliament. It must also not lead to an absurdity. Considering that a literal interpretation on s. 50(1)(b) of the Courts of Judicature Act 1964 ('CJA') would lead to an absurd situation where, among others, the High Court would have an unlimited jurisdiction to set aside criminal charges preferred in the subordinate courts and such decision could never be challenged by the prosecution, the doctrine of harmonious construction ought to be applied. Therefore, in considering whether the High Court, in exercising its inherent power to set aside criminal charges preferred in a subordinate court without going for trial, s. 50(1)(b) of the CJA must be harmoniously read together with ss. 31 and 35(1) of the same Act and s. 323 of the Criminal Procedure Code.*

JURISDICTION: *Courts – Inherent jurisdiction – Application to Court of Appeal to exercise its inherent jurisdiction to invalidate its previous decision made by different panel of judges – Previous decision made pursuant to appeal against decision of High Court which exercised inherent power to set aside criminal charges preferred in Sessions Court – Whether appeal from High Court competent – Whether High Court had jurisdiction – Whether High Court in deciding application to set aside criminal charges, was exercising its original, appellate or revisionary jurisdiction – Whether s. 50(1)(b) of Courts of Judicature Act 1964 ought to be read harmoniously with ss. 31 and 35(1) of same Act and s. 323 of Criminal Procedure Code – Rules of the Court of Appeal 1994, r. 105*

STATUTORY INTERPRETATION: *Construction of statutes – Jurisdiction – High Court exercised its inherent power to set aside criminal charges preferred in Sessions Court – Whether in determining jurisdiction of High Court, ss. 50(1)(b) of Courts of Judicature Act 1964 ought to be read harmoniously with ss. 31 and 35(1) of same Act and s. 323 of Criminal Procedure Code*

The applicant was the former Prime Minister of Malaysia and the current President of the Malaysian United Indigenous Party ('BERSATU'). At the Sessions Court, the applicant faced four counts of charges under s. 23(1) of the Malaysian Anti-Corruption Commission Act 2009 ('MACC Act') for the offences of receiving gratifications for his associate, BERSATU, while abusing the said positions ('charges'). On 18 April 2023, the applicant filed an application to the High Court for it to exercise its inherent power to strike out/quash the said charges without going for trial. On 15 August 2023, the application was allowed, and the applicant was acquitted and discharged from the said charges ('15 August 2023 High Court decision'). This prompted the prosecution ('respondent') to file an appeal to this court. After the appeal was heard by a different panel of judges on 28 February 2024 ('earlier panel'), the 15 August 2023 High Court decision was set aside ('28 February 2024 Court of Appeal decision'). Aggrieved, the applicant, among others, filed the present application to this court under r. 105 of the Rules of the Court of Appeal 1994 ('RCA') for this court to exercise its inherent jurisdiction to invalidate the 28 February 2024 Court of Appeal decision ('review application'). The review application was premised on the issue of lack of jurisdiction. According to the applicant, the earlier panel had acted more than its statutory conferred jurisdiction when it set aside the 15 August 2023 High Court decision. It was further submitted by the applicant that the 28 February 2024 Court of Appeal decision was not made *via* the court's exercise of its original, appellate or revisionary jurisdiction within the meaning of s. 50(1) of the Courts of Judicature Act 1964 ('CJA'). Therefore, the respondent's appeal to this court, which gave rise to the 28 February 2024 Court of Appeal decision, was incompetent because it failed to satisfy the statutory requirement under s. 50(1) of the CJA. Whereas the respondent, in resisting the review application, raised a preliminary objection. The respondent posited that the review application was an abuse of the process of the court because the issue of jurisdiction was never raised before the earlier panel. It was also contended that the 15 August 2023 High Court decision was decided in pursuance of the revisionary jurisdiction of the High Court, by virtue of ss. 50, 31 and 35 of the CJA read together with ss. 323 and 325 of the Criminal Procedure Code ('CPC'). Hence, any adverse ruling against the respondent would grant the same the right to file an appeal, which in turn would give this court the jurisdiction to hear and determine the respondent's appeal.

Held (dismissing application)

Per Azizah Nawawi JCA delivering the judgment of the court:

(1) Although the issue of jurisdiction was not raised by the applicant before the earlier panel, the applicant was neither estopped nor barred from raising the said issue *via* the review application. It is a well-established principle of law that neither consent nor waiver can confer jurisdiction

where none exists in the first place. As the applicant had raised the issue of lack of jurisdiction, the same issue could be raised at any time of the proceedings, including in the review application. (paras 21 & 24)

(2) All parties took the common position that when the High Court invoked its inherent jurisdiction to review and quash the charges, the High Court was not exercising its original jurisdiction within the ambit of s. 50(1) of the CJA. Moreover, considering that the application before the High Court was not to correct the decision of the Sessions Court, the High Court was not invoking its appellate jurisdiction. (paras 41 & 44)

(3) By filing the application on 18 April 2023, the applicant was asking the High Court to review the charges preferred against the applicant in the Sessions Court on the grounds that they did not disclose any offence and were lacking in particulars. This approach was in line with the substantive nature of the revisionary jurisdiction exercised by the High Court under ss. 31 and 35 of the CJA read together with ss. 323 and 325 of the CPC. Hence, when the High Court invoked its inherent jurisdiction to strike out the charges and acquit and discharge the applicant from the same, the High Court was exercising its revisionary jurisdiction to review the legality of those charges. It was only through the revisionary jurisdiction that the High Court could review and set aside the charges and the Sessions Court proceedings and acquit the applicant. (paras 51 & 52)

(4) Literal interpretation on s. 50(1)(b) of the CJA would lead to an absurdity that was not intended by Parliament. If the applicant was correct that there could be no appeal against the decision of the High Court to dismiss the charges and acquit the applicant, it would simply mean that the High Court has an unlimited jurisdiction to quash a criminal charge and acquit an accused person without trial. This would lead to an absurd situation where the prosecution would be left without any remedy as the propriety and correctness of the said decision could never be challenged. As such, s. 50(1)(b) of the CJA should not be read in isolation and all the relevant provisions on revisionary powers of the High Court ought to be read together as a whole and be construed harmoniously with one another to avoid any ambiguity or absurdity in the application of the law. Section 50(1)(b) of the CJA must be read harmoniously with other provisions which conferred the High Court its revisionary powers, in particular, ss. 31 and 35(1) of the CJA and s. 323 of the CPC. (paras 59, 60 & 63)

(5) When s. 50(1)(b) of the CJA and ss. 31 and 35(1) of the same Act and s. 323 of the CPC are read together harmoniously, *vide* the doctrine of harmonious construction, the jurisdiction to hear appeals from any decision made by the High Court in the exercise of its revisionary

jurisdiction in respect of any criminal matter is not limited to matters decided by the Sessions Court, but includes any matter where the High Court exercises its revisionary jurisdiction. This includes situations when the High Court exercises its jurisdiction to review, strike out the charges and acquit the applicant of the charges that were pending before the Sessions Court. Considering that the respondent's appeal against the 15 August 2023 High Court decision fell within the ambit of s. 50(1)(b) of the CJA, the earlier panel did have the jurisdiction to hear and adjudicate the respondent's appeal. The review application was therefore dismissed. (paras 69 & 70)

Case(s) referred to:

Abdullah Atan v. PP & Other Appeals [2020] 9 CLJ 151 FC ***(refd)***
Ahmad Zubair Hj Murshid v. PP [2014] 9 CLJ 289 FC ***(refd)***
Ahmadi Yahya v. PP [2012] 7 CLJ 113 CA ***(refd)***
Asean Security Paper Mills Sdn Bhd v. Mitsui Sumitomo Insurance (Malaysia) Bhd [2008] 6 CLJ 1 FC ***(refd)***
Asia Pacific Higher Learning Sdn Bhd v. Majlis Perubatan Malaysia & Anor [2020] 3 CLJ 153 FC ***(refd)***
Auto Dunia Sdn Bhd v. Wong Sai Fatt & Ors [1995] 3 CLJ 485 FC ***(refd)***
Chu Tak Fai v. PP [2006] 4 CLJ 931 FC ***(refd)***
Dato' Mohamed Hashim Shamsuddin v. The Attorney-General, Hong Kong [1986] 1 CLJ 377; [1986] CLJ (Rep) 89 SC ***(refd)***
Dato' Sri Mohd Najib Hj Abdul Razak v. PP [2023] 4 CLJ 343 FC ***(refd)***
Dr Mahmud Mohd Nor & Anor v. Dr Mohd Ismail Abdul Hamid [2023] CLJU 869; [2023] 1 LNS 869 CA ***(refd)***
Emperor v. Nasrullah & Ors [1928] AIR All 287 ***(refd)***
Harcharan Singh Piara Singh v. PP [2011] 6 CLJ 625 FC ***(refd)***
Karpal Singh & Anor v. PP [1991] 2 CLJ 1458; [1991] 1 CLJ (Rep) 183 SC ***(refd)***
Liaw Kwai Wah & Anor v. PP [1987] 1 CLJ 35; [1987] CLJ (Rep) 163 SC ***(refd)***
Manokaran & Anor v. PP [1978] CLJU 118; [1978] 1 LNS 118 HC ***(refd)***
Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v. Muziadi Mukhtar [2020] 1 CLJ 1 FC ***(refd)***
PP v. Kulasingam [1974] CLJU 118; [1974] 1 LNS 118 HC ***(refd)***
PP v. Ottavio Quattrocchi [2003] 1 CLJ 557 HC ***(refd)***
Ramanathan Chelliah v. PP [2009] 6 CLJ 55 CA ***(refd)***
Siow Chung Peng v. PP [2014] 6 CLJ 423 FC ***(refd)***
Tan Sri Eric Chia Eng Hock v. PP [2007] 1 CLJ 565 FC ***(refd)***
Tio Chee Hing v. United Overseas Bank (Malaysia) Bhd [2013] 2 CLJ 910 FC ***(refd)***
Wong Chun Khuen v. PP [2020] CLJU 2151; [2020] 1 LNS 2151 HC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, ss. 3, 22, 23, 24, 24A, 25, 25A, 26, 31, 35(1), 50(1)(a), (b), 87
Criminal Procedure Code, ss. 154, 323(1), 325
Malaysian Anti-Corruption Commission Act 2009, ss. 3, 23(1)
Penal Code, ss. 409, 418
Rules of Court of Appeal 1994, r. 105
Rules of the Fedeal Court 1995, r. 137

For the appellant - Hisyam Teh Poh Teik, K Kumaraendran, Steven Perian, Rosli Dahlan, Amer Hamzah, Arshad Chetan Jeth Wani, Dev Kumaraendran, Low Wei Loke, Kee Wei Lon, Teh See Khoon, Joshua Tay H'ng Foong, Siti Summaiyyah Ahmad Jaafar, Lee Yee Noei, Tang Jia Yearn & Nur Fatin Hafiza Hasham; M/s Chetan Jethwani & Company

For the respondent - Mohd Dusuki Mokhtar, Wan Shaharuddin Wan Ladin, Ahmad Akram Gharib, Norzilati Izhani Zainal, Ng Siew Wee, Zander Lim Wai Keong Nor Asma Ahmad & Noralis Mat; Attorney General's Chambers

Reported by Syamim Ariffin

JUDGMENT

Azizah Nawawi JCA:

Introduction

[1] The applicant has filed this review application under r. 105 of the Rules of the Court of Appeal 1994 ("RCA 1994"), seeking this court to invoke its inherent jurisdiction to invalidate a previous decision made by a different panel on 28 February 2024. The earlier decision had overturned a High Court decision to discharge and acquit the applicant in respect of abuse of power charges under sub-s. 23(1) of the Malaysian Anti-Corruption Commission Act 2009 ("MACC Act").

Background Facts

[2] The applicant was charged in the Sessions Court with four charges for abuse of power under sub-s. 23(1) of the MACC Act. The charges are reproduced as follows:

> **Pertuduhan Pertama:**
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> Bahawa kamu di antara 8 Februari 2021 dan 25 Februari 2021 di Pejabat Perdana Menteri, Blok Utama, Bangunan Perdana Putra, Pusat Pentadbiran Kerajaan Persekutuan, di dalam Wilayah Persekutuan Putrajaya, sebagai seorang pegawai badan awam, iaitu Perdana Menteri Malaysia dan Presiden Parti Pribumi Bersatu Malaysia, telah menggunakan kedudukan kamu untuk satu suapan, iaitu wang berjumlah RM200,000,000.00 (Ringgit Malaysia Dua Ratus Juta) daripada Bukhary Equity Sdn. Bhd., bagi sekutu kamu iaitu Parti Pribumi Bersatu Malaysia, oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 23(1) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah seksyen 24(1) Akta yang sama.
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> **Pertuduhan Kedua:**
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> Bahawa kamu di antara 1 Mac 2020 dan 20 Ogos 2021, di Pejabat Perdana Menteri, Blok Utama, Bangunan Perdana Putra, Pusat Pentadbiran Kerajaan Persekutuan, di dalam Wilayah Persekutuan Putrajaya, sebagai seorang pegawai badan awam, iaitu Perdana Menteri Malaysia dan Presiden Parti Pribumi Bersatu Malaysia, telah menggunakan kedudukan kamu untuk satu suapan, iaitu wang berjumlah RM100,000,000.00 (Ringgit

A Malaysia Satu Ratus Juta) daripada syarikat Nepturis Sdn. Bhd., bagi sekutu kamu iaitu Parti Pribumi Bersatu Malaysia, oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 23(1) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah seksyen 24(1) Akta yang sama.

B **Pertuduhan Ketiga:**

Bahawa kamu di antara 1 Mac 2020 dan 20 Ogos 2021, di Pejabat Perdana Menteri, Blok Utama, Bangunan Perdana Putra, Pusat Pentadbiran Kerajaan Persekutuan, di dalam Wilayah Persekutuan Putrajaya, sebagai seorang pegawai badan awam, iaitu Perdana Menteri Malaysia dan Presiden Parti Pribumi Bersatu Malaysia, telah menggunakan kedudukan
C kamu untuk satu suapan, iaitu wang berjumlah RM19,500,000.00 (Ringgit Malaysia Sembilan Belas Juta Lima Ratus Ribu) daripada syarikat Mamfor Sdn. Bhd., bagi sekutu kamu iaitu Parti Pribumi Bersatu Malaysia, oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 23(1) Akta Suruhanjaya Pencegahan Rasuah Malaysia
D 2009 yang boleh dihukum di bawah seksyen 24(1) Akta yang sama.

Pertuduhan Keempat:

Bahawa kamu di antara 1 Mac 2020 dan 20 Ogos 2021, di Pejabat Perdana Menteri, Blok Utama, Bangunan Perdana Putra, Pusat Pentadbiran Kerajaan Persekutuan, di dalam Wilayah Persekutuan Putrajaya, sebagai
E seorang pegawai badan awam, iaitu Perdana Menteri Malaysia dan Presiden Parti Pribumi Bersatu Malaysia, telah menggunakan kedudukan kamu untuk satu suapan, iaitu wang berjumlah RM12,000,000.00 (Ringgit Malaysia Dua Belas Juta) daripada Azman bin Yusoff (No.: K/P: 720103-11-5747), bagi sekutu kamu iaitu Parti Pribumi Bersatu Malaysia, oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen
F 23(1) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah seksyen 24(1) Akta yang sama.

[3] When the charges were read to the applicant, the applicant has pleaded not guilty to the charges and the case was fixed for hearing on the said charges.

G **[4]** However, on 18 April 2023, the applicant filed an application at the High Court, invoking the High Court's inherent powers to strike out/quash the charges. The application was based on two grounds:

(i) that the charges did not disclose any offence recognised by law because
H BERSATU as a political entity does not qualify as an "associate" under s. 3 of the MACC Act; and

(ii) that the charges lacked sufficient particulars for the applicant to mount an effective defence.

I **[5]** On 15 August 2023, the High Court allowed the application and struck out the charges preferred against the applicant. Consequently, the learned judge made an order that the applicant is acquitted and discharged in respect of the said charges.

[6] The prosecution had filed an appeal against the said decision to the Court of Appeal.

[7] On 28 February 2024, after hearing all parties, this court has allowed the prosecution's appeal and set aside the decision of the learned High Court Judge dated 15 August 2023.

[8] Aggrieved by the Court of Appeal's decision, the applicant filed a notice of appeal dated 29 February 2024 to the Federal Court. However, on 29 March 2024, the applicant filed a notice of discontinuance to withdraw the appeal at the Federal Court.

[9] On 27 March 2024, the applicant filed an application in this court seeking to review the decision of the earlier panel dated 24 April 2024 (the "decision").

Law On Review

[10] It is common ground that this court has the inherent powers to review the decision of the earlier panel. This is pursuant to r. 105 of the RCA 1994, which reads as follows:

> For the avoidance of doubt, it is declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

[11] This inherent jurisdiction is well-established from the following cases. In *Chu Tak Fai v. PP* [2006] 4 CLJ 931.

> [3] *We are of the view that it is important to recognise that this Court has a residual jurisdiction to reopen an appeal which it had already determined particularly in cases where there is no further recourse to a party. In a case as the present, since the accused was tried in a subordinate court, this court is the court of last resort.* The jurisdiction to reopen and review is therefore important in a case as the present to ensure that a manifest injustice does not go by uncorrected. (emphasis added)

[12] In *Ramanathan Chelliah v. PP* [2009] 6 CLJ 55 Justice Gopal Sri Ram JCA (as he then was) held as follows at p. 59 in allowing the applicant's review application:

> [2] We will take the question of jurisdiction first. It is now settled that the Court of Appeal has jurisdiction to review its own decision in a given case. See, *Taylor v. Lawrence* [2002] EWCA Civ 90, where it was held as follows: The Court of Appeal had a residual jurisdiction to reopen an appeal which it had already determined in order to avoid real injustice in exceptional circumstances. The court had implicit powers to do that which was necessary to achieve the dual objectives of an appellate court, namely to correct wrong decisions so as to ensure justice between the litigants involved, and to ensure public confidence in the administration of justice,

A not only by remedying wrong decisions, but also by clarifying and developing the law and setting precedents. *A court had to have such powers in order to enforce its rules of practice, suppress any abuses of its process and defeat any attempted thwarting of its processes. The residual jurisdiction to reopen appeals was linked to a discretion which enabled the Court of Appeal to confine its use to the cases in which it was appropriate for the jurisdiction to be exercised.*

B (emphasis added)

[13] In *Harcharan Singh Piara Singh v. PP* [2011] 6 CLJ 625, the Federal Court held as follows at p. 633:

[16] Simply put, the rule is nothing more than to declare the obvious that
C is *the inherent power of this court being the apex court of this country 'to prevent injustice or to prevent an abuse of the process of the court'. A court of final instance must be equipped with residual jurisdiction to rehear and reopen its own earlier decision in a fit and proper case.* (See: *Taylor v. Lawrence* [2002] 2 All ER 353, and *Re Uddin* [2005] 3 All ER 550). But the rule does not create or provide additional power or new jurisdiction to this court. (See: *Asean Security*
D *Paper Mills Sdn Bhd v. Mitsui Sumitomo Insurance (Malaysia) Bhd* [2008] 6 CLJ 1). Such must be the legal position as there should be finality in any decision of this court. (See: *Allied Capital Sdn Bhd v. Mohd Latiff Shah Mohd & Another Application* [2004] 4 CLJ 350; *Adorna Properties Sdn Bhd v. Kobchai Sosothikul* [2005] 1 CLJ 565; *PP v. Denish Madhavan* [2010] 5 CLJ 635).
(emphasis added)

E **[14]** In *Ahmadi Yahya v. PP* [2012] 7 CLJ 113, Azahar Mohamed JCA, (as he then was) had held as follows at p. 125 to p. 126:

[24] After giving my utmost and anxious consideration to this issue, with the greatest of respect, I find myself in agreement with the judgments of
F this court in *Ramanathan Chelliah v. PP* (*supra*), *PP v. Abdullah Idris* (*supra*) and the minority judgment in *Ishak Hj Shaari v. PP* (*supra*). In my view, it is clear on principle and on authority that in very limited and exceptional circumstances, in order to uphold the Court of Appeal as a court of justice and to meet the ends of justice, it must have an inherent jurisdiction and the necessary inherent power to prevent injustice and to ensure public
G confidence in the administration of justice. *In a case where there is no alternative effective remedy, as an apex court, the Court of Appeal has an inherent jurisdiction to review, and if the circumstances so warrant, to set aside an earlier decision made for instance, in clear violation or breach of statutory law.* Courts of justice have no authority to act in contravention of written law. For that reason, the ends of justice will not be met if such inherent jurisdiction and
H inherent power do not exist. But such an exercise must only be undertaken sparingly and with circumspection. It is important that this court makes use of it with a proper sense of responsibility and wisely to remove any injustice. I now give my reasons for so deciding.
(emphasis added)

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[15] Premised on the above cases, the principle that can be distilled is that where the Court of Appeal acted as the apex court and there is no alternative remedy *via* an appeal to the Federal Court, the Court of Appeal has an inherent jurisdiction to review, and if the circumstances so warrant, to set aside an earlier decision that was made by another panel of this court.

[16] In the present case, the applicant takes the position that this court is the apex court to review the charges that was framed against him in the Sessions Court. Therefore, the applicant has filed this application for review and proceeded to withdraw his appeal to the Federal Court against the decision of this court dated 24 April 2024.

Grounds For Review

[17] Rule 105 of the RCA 1994 is *pari materia* with r. 137 of the Rules of the Federal Court 1995, which provides inherent jurisdiction of the Federal Court. Rule 137 was considered by the Federal Court in *Asean Security Paper Mills Sdn Bhd v. Mitsui Sumitomo Insurance (Malaysia) Bhd* [2008] 6 CLJ 1, where the Federal Court has set out the grounds to review the decision of an earlier panel:

> [39] There is no doubt that this court has that authority to allow this application. Whether it does so, depends on the circumstances of each case. This court has on many previous occasions decided that it has the right to order a review of its own decision to prevent injustice or an abuse of the process of the court. It has that very wide discretion. However, that wide discretion will not be used liberally but only sparingly, in exceptional cases and on a case to case basis where a significant injustice had probably occurred and there was no alternative effective remedy. The court must exercise strong control over such application. It must be satisfied that it is within exceptional category. Rule 137 cannot be construed as conferring unlimited power to review its earlier decision for whatever purpose. The court must not be too eager to invoke the rule.
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> [40] Some of the circumstances in which this discretion should be exercised or not, are as follows:
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> a. That there was a lack of quorum *eg*, the court was not duly constituted as two of the three presiding judges had retired. (*Chia Yan Tek & Anor v. Ng Swee Kiat & Anor* [2001] 4 CLJ 61);
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> b. The applicant had been denied the right to have his appeal heard on merits by the appellate court. (*Megat Najmuddin bin Dato Seri (Dr) Megat Khas v. Bank Bumiputra (M) Bhd* [2002] 1 CLJ 645);
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> c. Where the decision had been obtained by fraud or suppression of material evidence. (*MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun* [2002] 3 CLJ 577);

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d. **Where the court making the decision** was not properly constituted, was illegal or **was lacking jurisdiction,** but the lack of jurisdiction is not confined to the standing of the quorum that rendered the impugned decision. (*Allied Capital Sdn Bhd v. Mohd Latiff bin Shah Mohd and another application* [2004] 4 CLJ 350);

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e. **Clear infringement of the law.** (*Adorna Properties Sdn Bhd v. Kobchai Sosothikul* [2005] 1 CLJ 565);

f. It does not apply where the findings of this court is questioned, whether in law or on the facts (since these are matters of opinion which this court may disagree with its earlier panel). (*Chan Yock Cher @ Chan Yock Kher v. Chan Teong Peng* [2005] 4 CLJ 29);

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g. Where an applicant under r. 137 has not been heard by this court and yet through no fault of his, an order was inadvertently made as if he had been heard. (*Raja Prithwi Chand v. Sukhraj Rai* [AIR] 1941);

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h. Where bias had been established. (*Taylor & Anor v. Lawrence & Anor* [2002] 2 All ER 353);

i. Where it is demonstrated that the integrity of its earlier decision had been critically undermined *eg*, where the process had been corrupted and a wrong result might have been arrived at. (*Re Uddin* [2005] 3 All ER 550); and

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j. Where the Federal Court allows an appeal which should have been consequentially dismissed because it accepted the concurrent findings of the High Court and Court of Appeal. (*Joceline Tan Poh Choo & Ors v. V. Muthusamy* [2007] 6 CLJ 1; [2007] 6 MLJ 485).

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[41] These are but just instances where the court has exercised its discretion to invoke r. 137. There may be many other instances where r. 137 may apply as can be seen from Civil Procedure books where High Courts exercise their inherent jurisdiction to prevent injustice or abuse of the process of the court. By the very meaning of "inherent", as discussed earlier, it is not wise to even attempt to list out the other instances where this court should exercise such discretion. It is best to leave the question open and decide the applications as they come before this court. Inherent jurisdiction is not something conferred by the statute but which it has by its very nature of being a court to enable it to do justice and prevent injustice. (emphasis added)

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[18] The above proposition of law was reaffirmed by the Federal Court in the majority judgment of *Dato' Sri Mohd Najib Hj Abdul Razak v. PP* [2023] 4 CLJ 343, where His Lordship Vernon Ong FCJ held as follows at p. 366:

[58] In *Asean Securities Paper Mills* (*supra*), this court speaking through Zaki Tun Azmi PCA (as he then was) stated *that r. 137 of the Rules of the Federal Court 1995 is an affirmation of this court's inherent jurisdiction to hear any application or to make any order to prevent injustice or abuse of process of the court.* We take this occasion to emphasise that whilst r. 137 may be invoked by

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> a party who is dissatisfied with a judgment of this court to prevent injustice or to prevent an abuse of the process of the court, r. 137 should never be invoked unless that case falls within the limited grounds and very exceptional circumstances in which a review may be made. Absent said limited grounds and very exceptional circumstances, the invocation of r. 137 by a dissatisfied party would constitute an abuse of the process of the court. We stress that r. 137 should never be used to abuse the process of the court, and that any abuse of the process of the court is to be deprecated. (emphasis added)

[19] In the present case, the application for review is premised on the issue of lack of jurisdiction, that is, the previous panel of this court had acted in excess of its statutory conferred jurisdiction, one of the limited grounds and very exceptional circumstances listed in *Asean Security Paper Mills Sdn Bhd* (*supra*).

Preliminary Objection

[20] However, before we deal with the merit of the application, the respondent had, *vide* encl. (5), raised a preliminary objection that this application is an abuse of the process of the court. This is because the issue of jurisdiction was not raised before the earlier panel.

[21] We are of the considered opinion that even though the issue of jurisdiction was not raised by the applicant before the earlier panel, we agree with the applicant that the applicant is neither estopped nor barred from raising this issue of lack of jurisdiction *via* this review application. It is a well-established principle of law that neither consent nor waiver can confer jurisdiction where none exists in the first place.

[22] We adopt the approach of the Federal Court in *Asia Pacific Higher Learning Sdn Bhd v. Majlis Perubatan Malaysia & Anor* [2020] 3 CLJ 153, where Idrus Harun FCJ states as follows:

> [18] *It is relevant to note that as a general rule, a judicial decision made in want of jurisdiction or in breach of statute would be considered a nullity that is amenable to review at any stage of the proceedings and that the court has inherent powers to set aside non-appealable orders exercisable on its own motion and even if parties did not raise objections as to want of jurisdiction or tacitly acquiesce in the matter or brought by the party which the order purports to affect for that purpose (Badiaddin bin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75; [1998] 1 MLJ 393).* Accordingly, while the respondent is quite correct to regard the preliminary issue was raised at the eleventh hour, I see nothing in the respondents' protestation that the preliminary point was not raised in the intermediate appellate court below us to entitle this Court to refuse to hear it. I reject their argument. (emphasis added)

[23] The same principle applies to criminal applications. In *PP v. Ottavio Quattrocchi* [2003] 1 CLJ 557; [2003] 1 MLJ 225, Justice Augustine Paul (as he then was) had held as follows:

A A court can hear a matter only if it has jurisdiction to do so. Consent or waiver cannot confer jurisdiction or power on the court to hear and determine an issue or a cause of action which is non-existent (see *Cheng Keng Hoong v. Government of the Federation of Malaya* [1967] 2 MLJ 1). A trial conducted without jurisdiction is a nullity (see *Public Prosecutor v. Karnal Singh* [1970] 1 MLJ 49). It is therefore pointless for the court to proceed
B with a hearing if at the end it is found to be a nullity for want of jurisdiction. **If a jurisdictional objection is apparent at the commencement of the inquiry I do not see any reason why it cannot be raised at that stage as the inquiry cannot proceed further without a resolution of the issue** … (emphasis added)

C **[24]** As the applicant has raised the issue of lack of jurisdiction, we are of the considered opinion that this jurisdictional issue may be raised at any time of the proceedings, including in an application to review the decision of the earlier panel of this court.

Applicant's Submission

D

[25] It is the submission of the applicant that the present review application is premised on the issue of jurisdiction, that is, the previous panel of this court had acted in excess of its statutory conferred jurisdiction.

[26] The applicant submits that the decision delivered by the High Court
E Judge on 15 August 2023 in allowing the said criminal application was not made by the High Court in exercising its original, appellate or revisionary jurisdiction within the ambit of s. 50 of the Courts of Judicature Act 1964 ("CJA 1964"). This is because when the applicant was charged, he was to be tried for the alleged offences under sub-s. 23(1) of the MACC Act in the
F Sessions Court of Kuala Lumpur. However, the criminal application was made directly to the High Court of Kuala Lumpur, invoking the inherent jurisdiction of the High Court.

[27] The applicant had never challenged the validity of these criminal charges before the Sessions Court of Kuala Lumpur. Therefore, the decision
G by the High Court was not made pursuant to its appellate nor revisionary jurisdiction in respect of any criminal matter decided by the said Sessions Court of Kuala Lumpur. As such, the applicant submitted that the respondent's appeal to the Count of Appeal was incompetent, as it failed to satisfy the statutory requirement of sub-s. 50(1) of the CJA 1964.

H **[28]** Consequently, since the appeal was not within the ambit of sub-s. 50(1) of the CJA 1964, the previous panel of this court had exceeded its jurisdiction when it heard and granted the appeal on 28 February 2024.

Respondent's Submission

I **[29]** On the other hand, the respondent argued that when ss. 50, 3, 31, and 35 of the CJA 1964 are read together with ss. 323 and 325 of the CPC, the High Court Judge was simply exercising revisionary jurisdiction over the lower court.

[30] Therefore, any adverse ruling against the respondent granted a right of appeal, giving the Court of Appeal the jurisdiction to hear and determine the appeal pursuant to sub-s. 50(1) of the CJA 1964.

Our Decision

[31] It is common ground that appeals are creatures of statute and unless a litigant can meet the statutory requirement for an appeal, no appeal can lie. This was set out by Justice Edgar Joseph Jr FCJ (as he then was) in the case of *Auto Dunia Sdn Bhd v. Wong Sai Fatt & Ors* [1995] 3 CLJ 485; [1995] 2 MLJ 549, where His Lordship held that:

> It is an elementary proposition that this court is a creature of statute and that equally a right of appeal is also a creature of statute, so that unless an aggrieved party can bring himself within the terms of a statutory provision enabling him to appeal, no appeal lies.

[32] It is the submission of the applicant that the decision of the earlier panel is a nullity and/or illegal as it was made without jurisdiction pursuant to sub-s. 50(1) of the CJA 1964, which reads as follows:

> **Jurisdiction to hear and determine criminal appeals**
>
> 50(1) Subject to any rules regulating the proceedings of the Court of Appeal in respect of criminal appeals, the Court of Appeal shall have jurisdiction to hear and determine any appeal against any decision made by the High Court -
>
> (a) in the exercise of its original jurisdiction; and
>
> (b) in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by the Sessions Court.

[33] Therefore, the only issue before us is whether the learned High Court Judge, in exercising his inherent jurisdiction to quash the criminal charges against the applicant, was exercising the original, appellate or revisionary jurisdiction within the ambit of sub-s. 50(1) of the CJA 1964.

Original Jurisdiction

[34] Original jurisdiction of the High Courts is governed by ss. 22 to 25A of the CJA 1964. In respect of criminal jurisdiction, the same is provided under s. 22 of the CJA 1964. Section 22 reads:

> (1) the High Court shall have jurisdiction to try -
>
> (a) all offences committed -
>
> (i) within its local jurisdiction;
>
> (ii) on the high seas on board any ship or on any aircraft registered in Malaysia;
>
> (iii) by any citizen or any permanent resident on the high seas on board any ship or on any aircraft;

(iv) by any person on the high seas where the offence is piracy by the law of nations; and

(b) offences under Chapters VI and VIA of the Penal Code, and under any of the written laws specified in the Schedule to the Extra-Territorial Offences Act 1976, or offences under any other written law the commission of which is certified by the Attorney General to affect the security of Malaysia committed, as the case may be -

(i) on the high seas on board any ship or on any aircraft registered in Malaysia;

(ii) by any citizen or any permanent resident on the high seas on board any ship or on any aircraft;

(iii) by any citizen or any permanent resident in any place without and beyond the limits of Malaysia;

(iv) by any person against a citizen of Malaysia;

(v) by any person against property belonging to the Government of Malaysia or the Government of any State in Malaysia located outside Malaysia, including diplomatic or consular premises of Malaysia;

(vi) by any person to compel the Government of Malaysia or the Government of any State in Malaysia to do or refrain from doing any act;

(vii) by any stateless person who has his habitual residence in Malaysia;

(viii) by any person against or on board a fixed platform while it is located on the continental shelf of Malaysia; or

(ix) by any person who after the commission of the offence is present in Malaysia.

(2) The High Court may pass any sentence allowed by law.

[35] The Supreme Court in *Dato' Mohamed Hashim Shamsuddin v. The Attorney-General, Hong Kong* [1986] 1 CLJ 377; [1986] CLJ (Rep) 89; [1986] 2 MLJ 112 has affirmed that s. 22 of the CJA 1964 relates to the original criminal jurisdiction of the High Court:

> In the sphere of criminal jurisdiction, the High Court has three jurisdictions, namely, original, appellate and revisionary. With regard to its original jurisdiction, section 22(1)(a)(i) of the Act states that the High Court shall have jurisdiction **to try all offences committed within its local jurisdiction.** (emphasis added)

[36] The Federal Court in *Tan Sri Eric Chia Eng Hock v. PP* [2007] 1 CLJ 565, also held that the original jurisdiction of the High Court, whether it is civil or criminal jurisdiction, is provided by ss. 22 to 25 of the CJA 1964.

[37] In *Siow Chung Peng v. PP* [2014] 6 CLJ 423, the Federal Court held that:

> [20] The words of a statute are to be construed, *noscitur a sociis*, in the light of their context. 'Original jurisdiction' is clearly not 'jurisdiction first exercised'. **Under the CJA, 'original criminal jurisdiction' is the jurisdiction to try offences,** with s. 30 of the CJA as the exception. The key words in s. 22(1) of the CJA are "jurisdiction to try".
>
> (emphasis added)

[38] The same issue was considered by the Federal Court in *Ahmad Zubair Hj Murshid v. PP* [2014] 9 CLJ 289. In this case, the appellant was charged in the Kuala Lumpur Sessions Court with two principal amended charges under s. 409 of the Penal Code and two alternative amended charges under s. 418 of the same.

[39] Before the trial at the Sessions Court commenced, the appellant filed a notice of motion to the High Court on 2 January 2013 to strike out the charges preferred against him on the grounds that the charges were defective, in substance and in form. The learned High Court Judge, while acknowledging that the High Court possesses the inherent jurisdiction to acquit and discharge the appellant from all the charges or to strike out the charges, had dismissed the motion. The appellant's appeal was dismissed by the Court of Appeal.

[40] Aggrieved, the appellant mounted an appeal to the Federal Court. The issue before the Federal Court is whether the Federal Court has the jurisdiction to hear the said appeal from the Court of Appeal on a matter decided by the High Court in its original jurisdiction pursuant to s. 87 of the CJA 1964. The Federal Court held that the High Court was not exercising its original jurisdiction when it dismissed the motion to dismiss the chargers. Therefore, the Federal Court has no jurisdiction to hear the appeal. Justice Raus Sharif PCA said at p. 303:

> [22] As stated earlier, learned counsel's contention was that the High Court in hearing the motion was in fact exercising its original jurisdiction and thus the decision of the Court of Appeal on the matter was appealable to the Federal Court. With respect, we disagree. *We are of the view that the High Court, in hearing the motion cannot be said to be exercising its original jurisdiction. This is because the subject matter of the motion was in relation to the charges that were preferred against the appellant in the Sessions Court. Without the charges in the Sessions Court, the appellant has no basis to file the motion before the High Court. In short, the application cannot stand on its own. In fact even the motion filed was premised on the criminal trial number of the Sessions Court.*
>
> (emphasis added)

[41] In the present application, all parties took the common position that when the learned High Court Judge invoked inherent jurisdiction to review and quash the charges against the applicant, the learned judge was not exercising his original jurisdiction within the ambit of para. 50(1)(a) of the CJA 1964.

Appellate Jurisdiction

[42] Next, we have to ascertain if the learned judge was invoking the appellate criminal jurisdiction when he invoked the inherent jurisdiction to review and quash the charges against the applicant. Appellate criminal jurisdiction of the High Court Judge is provided in s. 26 of the CJA 1964, which reads:

> **26. Appellate criminal jurisdiction**
>
> The appellate criminal jurisdiction of the High Court shall consist of the hearing of appeals from subordinate courts according to any law for the time being in force within the territorial jurisdiction of the High Court.

[43] The Federal Court in *Tio Chee Hing v. United Overseas Bank (Malaysia) Bhd* [2013] 2 CLJ 910 explained appellate jurisdiction to be as follows:

> [17] In the scheme of the CJA, a distinction is made between an appellate jurisdiction and an original jurisdiction. The term 'original jurisdiction', is a reference to 'the jurisdiction to entertain cases in the first instance as distinguished from appellate jurisdiction' (*Aiyar's Major law Lexicon* (2010 edn.) vol. 4 4828-29; see also *G Pattedar v. Mahaboob* AIR 2005 Kant 377). Matters relating to the original jurisdiction of the High Court, *i*e, of matters first commenced by it are found in ss. 22 to 25A of the CJA (*Tan Sri Eric Chia Eng Hock v. PP* [2007] 1 CLJ 565). *Whilst for its appellate jurisdiction, the ordinary meaning suggesting the correction of a decision, causing it to be set aside pursuant to a filing of a notice of appeal by an aggrieved party,* ss. 26 to 30 of the CJA are relevant (*Nagendra Nath v. Suresh* AIR 1932 PC 165). Under ss. 26-28 of the CJA the High Court exercises appellate jurisdiction in hearing appeals from subordinate courts. Subordinate court is defined as "any inferior court from the decisions of which by reason of any written law there is a right of appeal to the High Court (s. 3 of the CJA)". Given the differentiation between the two jurisdictions we shall not discuss this matter any further. Suffice it to say that even the table of contents has delineated the differences. (emphasis added)

[44] Since the application before the High Court was not to correct the decision of the Session Court, the learned High Court Judge was not invoking an appellate jurisdiction.

Revisionary Jurisdiction

[45] The next issue is whether the decision of the learned High Court Judge is appealable to this court under the revisionary jurisdiction pursuant to para. 50(1)(b) of the CJA 1964.

[46] The primary purpose of the High Court's revisionary jurisdiction is to enable the court to correct or prevent a miscarriage of justice. In a revision, the primary concern is whether substantial justice has been or will be achieved, and whether it is necessary to intervene in the proceedings of a subordinate court to uphold the interests of justice.

[47] The Supreme Court in *Liaw Kwai Wah & Anor v. PP* [1987] 1 CLJ 35; [1987] CLJ Rep 163; [1987] 2 MLJ 69, has cited with approval the leading Indian case on this subject – *Emperor v. Nasrullah & Ors* [1928] AIR All 287 (Ind), in the following terms: A

> Object of revision
>
> We would observe that the power of revision is to be exercised in accordance with the law for the time being in force relating to criminal procedure. In the present case that law is the Criminal Procedure Code. *We would also observe that the object of the revisionary powers provided for in the Code is –*
>
> > *... to confer upon criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment,* which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand, in some undeserved hardship to individuals.
>
> (emphasis added)

B C D

[48] Hashim Yeop Sani J (as he then was) said in the case of *PP v. Kulasingam* [1974] CLJU 118; [1974] 1 LNS 118; [1974] 2 MLJ 26 at p. 26:

> The object of revisionary powers of the High Court is to confer upon the High Court a kind of 'paternal or supervisory jurisdiction' in order to correct or prevent a miscarriage of justice. In a revision, the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice.

E F

[49] In *Tan Sri Eric Chia Eng Hock v. PP* [2007] 1 CLJ 565, the Federal Court held as follows:

> [32] *It has been said that a 'revision is not a right and is only a procedural facility afforded to a party, while an appeal is a statutory right conferred on a party.* It cannot be said that a proceeding in revision is a continuation of the suit, appeal or trial. *It is only a step in-aid for invoking the powers of superintendence by the Sessions Judge and the High Court for correcting irregularities if any, in the judgments and orders of the subordinate courts. Interference in revision being a discretionary power vested in the superior courts, a revision petition cannot be considered to be a continuation of the proceedings pending in the trial court or the appellate court'* (see: *Kunhammad v. Abdul Kader* [1977] KLT 840). Similarly, in *Ku Izham bin Ku Adnan v. Public Prosecutor* [1998] 2 CLJ 956 it was said that the 'object of a revision is to confer upon criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment, which has resulted in some injury to the due maintenance of law and order or in some undeserved hardship to individuals. The judge's duty is to satisfy

G H I

A himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court. (emphasis added)

[50] The exercise of revisionary jurisdiction is typically preceded by an ongoing proceeding in the subordinate court. In the present case, the B application filed by the applicant in the High Court was to strike out all the four criminal charges in the Session Court on two grounds:

(i) that none of the four charges disclose any offence known to law; and

(ii) that the four charges are lacking in material particulars in breach of C s. 154 of the Criminal Procedure Code.

[51] The reliefs sought by the applicant are not within the jurisdiction of the Session Court as the applicant was seeking to quash the charges without a full trial. As such, the applicant has filed the application in the High Court and seeking reliefs from the High Court by invoking its inherent jurisdiction. D Therefore, by filing the said application, the applicant was asking the High Court to review the charges that was preferred against him in the Sessions Court, on the basis that the charges do not disclose any offence and that they are lacking in particulars. This approach is in line with the substantive nature of the revisionary jurisdiction exercised by the High Court under ss. 31 and E 35 of the CJA 1964, read with ss. 323 and 325 of the CPC.

[52] We are therefore of the considered opinion that when the learned judge invoked his inherent jurisdiction to strike out the criminal charges against the applicant and acquitted him of the same, the learned judge was exercising his revisionary powers by reviewing the legality of those charges. It is only F through the exercise of its inherent jurisdiction that the High Court can review and set aside the charges, set aside the Sessions Court proceedings, and acquit the applicant. (See *Karpal Singh & Anor v. PP* [1991] 2 CLJ 1458; [1991] 1 CLJ (Rep) 183; [1991] 2 MLJ 544).

[53] This approach is in accord with the decision of the Federal Court in G the case of *Ahmad Zubair Hj Murshid v. PP* (*supra*). In this case, the Federal Court held that since the appeal did not originate from the High Court, the Federal Court has no jurisdiction to hear the appeal. However, the Federal Court referred to the fact that the subject matter of the motion in the High Court was directly related to the charges brought against the appellant in the H Sessions Court. Without those charges, the appellant would have no grounds to file the motion in the High Court. In essence, the application cannot stand independently. Moreover, the motion itself was filed based on the criminal trial number from the Sessions Court. In para. [23], the court held that:

[23] It is our view that the High Court in the instant case was not the I trial court. The trial court has to be the Sessions Court. No doubt the hearing of the motion was first exercised by the High Court, but the hearing before the High Court cannot be equated to that of a court of

> first instance. The High Court in doing so was not exercising its original jurisdiction. In the present case as the jurisdiction to try the charges was entrusted to the Sessions Court, the High Court in hearing the motion cannot be said to be exercising its original jurisdiction.

[54] The Federal Court decision in *Ahmad Zubair* (*supra*) is significant because it clarifies that when the High Court hears and decides on an application to dismiss a criminal charge being tried by the Sessions Court, it is not exercising its original jurisdiction. As such, the High Court can only be invoking its revisionary jurisdiction since the subject matter of the motion was in respect of the criminal charges preferred against the appellant in the Sessions Court, without which the appellant would have no basis to file the motion in the first place and that the motion filed was premised on the criminal trial number of the Session Court.

[55] In the present application, the charges against the applicant were pending trial in the Sessions Court. When the applicant filed the motion to strike out the four charges, the intitulement refers to the Sessions Court case. Since the motion was to strike out the criminal charges, the learned High Court was in fact reviewing the charges that was pending trial in the Sessions Court.

[56] However, the applicant took the position that the High Court's decision was not made under its revisionary jurisdiction regarding any criminal matter decided by the Sessions Court under para. 50(1)(b) of the CJA 1964. In para. (20) of the applicant's submission in reply, it was submitted that:

> For the High Court Judge to exercise his revisionary jurisdiction, the Sessions Court must have decided a criminal matter. This requirement is not engaged in the present case.

[57] In this respect, the applicant has applied a literal interpretation to this provision in para. 50(1)(b), *to wit*, 'any decision made by the High Court … (b) in the exercise of its … **revisionary jurisdiction in respect of any criminal matter decided by the Sessions Court'.** (emphasis added)

[58] By applying a literal interpretation, the applicant submits that the decision of the learned judge in invoking the inherent jurisdiction to quash or strike out the charges preferred against him does not fall within para. 50(1)(b) of the CJA 1964 as the learned judge was not exercising its revisionary jurisdiction regarding any criminal matter decided by the Sessions Court.

[59] We are of the considered opinion such an interpretation will lead to an absurdity that was not intended by Parliament. If the applicant is correct that there can be no appeal against the decision of the learned judge is dismissing the charges and acquitted the applicant, it would simply mean that

A the High Court has an unlimited jurisdiction to quash a criminal charge and acquit an accused person without trial. Further, it would lead to an absurd situation where the prosecution is left without any remedy as the propriety and correctness of the said decision can never be challenged.

B **[60]** We are of the considered opinion that para. 50(1)(b) of the CJA 1964 cannot be read in isolation, and that all the relevant provisions on revisionary powers of the High Court Judge must be read together as a whole and construed harmoniously with one another to avoid any ambiguity or absurdity in the application of law.

C **[61]** In *Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v. Muziadi Mukhtar* [2020] 1 CLJ 1, this court had discussed the doctrine of harmonious construction. This court held that:

> [78] In this regard, it would be convenient for us to discuss the doctrine of harmonious constructions. *To put it simply, the doctrine of harmonious construction means a statute should be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.* Such an interpretation is beneficial in avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. The five main principles of this doctrine/rule are as follows:
>
> (i) the court must avoid a head on clash of seemingly contradictory provisions and they must construe the contradictory provisions so to harmonise them (see *Commissioner of Income Tax v. Hindustan Bulk Carriers* [2002] 3 SCC 57, p. 74);
>
> (ii) the provision of one section cannot be used to defeat the provision contained in another unless the court, despite all its efforts, is unable to find a way to reconcile their differences;
>
> (iii) when it is impossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such a way that effect is given to both provisions as much as possible (see *Sultana Begum v. Prem Chand Jain*, AIR 1997 SC 1006, pp. 1009, 1010);
>
> (iv) courts must also keep in mind that interpretation that reduces one provision to useless or dead lumber is not harmonious construction (see *Commissioner of Income Tax v. Hindustan Bulk Carriers* [2002] 3 SCC 57, p. 74); and
>
> (v) to harmonise is not to destroy any statutory provision or to render it fruitless.
>
> [79] In a nutshell, the doctrine requires that the legislation be construed in a way which would achieve a harmonious result, and that construction should favour coherence in the law. (emphasis added)

I (see *Dr Mahmud Mohd Nor & Anor v. Dr Mohd Ismail Abdul Hamid* [2023] CLJU 869; [2023] 1 LNS 869).

[62] In *Abdullah Atan v. PP & Other Appeals* [2020] 9 CLJ 151, this court has applied the doctrine of harmonious construction in construing two different statutes and held as follows:

> [58] Section 180(4) of the CPC and s. 37(da) of the DDA must be read harmoniously, applying the doctrine of harmonious construction. *In a nutshell, the doctrine requires that the legislation be construed in a way which would achieve a harmonious result and that construction should favour coherence in the law* (see *Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v. Muziadi Mukhtar* [2020] 1 CLJ 1; [2020] 1 MLJ 141 at paras. 78 to 79). A harmonious construction would limit 'credible evidence' to the actual finding of possession, as propounded in Muhammed Hassan, and once that is established successfully, it would invoke the presumption of trafficking. Defence will then be called on trafficking where the legal burden would shift to the accused to disprove trafficking.
>
> (emphasis added)

[63] Therefore, para. 50(1)(b) of the CJA 1964 must be read harmoniously with the other provisions in the CJA 1964, in particular the revisionary powers of the High Court conferred by ss. 31 and sub-s. 35(1) of the CJA 1964 and s. 323 of the CPC. These provisions are on revisionary jurisdiction of the High Court over the subordinate courts. Sections 31 and 35 of the CJA 1964 read:

> **Revision**
>
> **31. Revision of criminal proceedings of subordinate courts**
>
> The High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts in accordance with any law for the time being in force relating to criminal procedure.
>
> …
>
> **35. General supervisory and revisionary jurisdiction of High Court**
>
> (1) In addition to the powers conferred on the High Court by this or any other written law, the High Court shall have general supervisory and revisionary jurisdiction over all subordinate courts, and may in particular, but without prejudice to the generality of the foregoing provision, if it appears desirable in the interests of justice, either of its own motion or at the instance of any party or person interested, at any stage in any matter or proceeding, whether civil or criminal, in any subordinate court, call for the record thereof, and may remove the same into the High Court or may give to the subordinate court such directions as to the further conduct of the same as justice may require.
>
> (2) Upon the High Court calling for any record as aforesaid all proceedings in the subordinate court in the matter or proceeding in question shall be stayed pending further order of the High Court.

[64] Subsection 323(1) of the CPC provides as follows:

> A Judge may call for and examine the record of any proceeding before any subordinate Criminal Court for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of that subordinate Court.

[65] From the above provisions, the High Court has wide supervisory and revisionary jurisdiction over subordinate courts. It can review and take action on any criminal matter, either on its own or upon request, if necessary, in the interest of justice. The High Court may call for records and issue directions to the subordinate court when required. The High Court Judge may request and review the record of any proceeding in a subordinate criminal court to ensure the accuracy, legality, or appropriateness of any decision, sentence, or order, as well as the proper conduct of the court's proceedings.

[66] In the case of *Manokaran & Anor v. PP* [1978] CLJU 118; [1978] 1 LNS 118; [1979] 1 MLJ 262, Abdoolcader J (as he then was) ruled that the High Court has not only extensive powers of revision in criminal proceedings under the provisions of s. 323 of the CPC, "but even wider powers conferred by s. 35 of the Courts of Judicature Act 1964 ...".

[67] In *Wong Chun Khuen v. PP* [2020] CLJU 2151; [2020] 1 LNS 2151, the court held that the duty lies with the High Court to see that the criminal law is properly administered by an inferior court:

> The Judge's duty is to satisfy himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court. Where, for instance, a convicted person has scrupulous objection to invoke the jurisdiction of a High Court, either on a question of legality of conviction or error of law concerning the conviction or sentence, the Judge ought to call for and examine the record with a view to exercising the revisionary power to correct a miscarriage of justice.

[68] We are therefore of the considered opinion that the revisionary jurisdiction of the High Court Judge is not limited to ascertaining the legality and propriety of the decision of the subordinate courts. The revisionary jurisdiction allows the High Court to intervene at any stage in the proceeding of the subordinate court. The High Court can review and take action on any criminal matter, either on its own or upon request by parties, if necessary, in the interest of justice.

[69] Therefore, applying the doctrine of harmonious construction, we find that para. 50(1)(b) must be read harmoniously with s. 31 and sub-s. 35(1) of the CJA 1964 and s. 323 of the CPC. When read harmoniously, the jurisdiction to hear appeals from any decision made by the High Court in the

exercise of its revisionary jurisdiction in respect of any criminal matter is not limited to matters decided by the Sessions Court, but includes any matters where the High Court exercises its revisionary jurisdiction. This would necessarily include situations when the High Court exercise its inherent jurisdiction to review, strike out the charges and acquitted the applicant of the criminal charges that were pending trial in the Sessions Court.

Conclusion

[70] For the aforesaid reasons, we are of the considered opinion that the respondent's appeal against the decision of the learned High Court Judge falls within the ambit of para. 50(1)(b) of the CJA 1964. Consequently, we find that the earlier panel had the requisite jurisdiction to hear and adjudicate the matter. Therefore, the application to review the earlier panel's decision is dismissed.